

STUART H. FINKELSTEIN

Attorney at Law

338 Jericho Turnpike
Syosset, New York 11791
(718) 261-4900

July 7th, 2021

The Honorable Stewart D. Aaron
Southern District of New York
Daniel Patrick Moynihan
United States District Court
500 Pearl Street - Courtroom 11C
New York, New York 10007

Re: Antolini vs. McCloskey, et al
Case No.: 1:19-cv-09038-GBD

Magistrate Aaron,

In response to DE 191 be advised of the following:

1) The order of June 19, 2021 regarding the continuation of Mr. Antolini's deposition reads as follows "It is hereby ORDERED that, if Defendants choose to continue Plaintiff's deposition, *Plaintiff's deposition shall be concluded no later than July 23, 2021*" they have." Therefore, there is no directive from the court or otherwise that it must be held July 9, 2021, but, quite simply, no later than July 23, 2021. Why anyone would think Plaintiff and his counsel are failing to obey discovery orders pursuant to Federal Rule of Civil Procedure 37(b) and/or failing to prosecute pursuant to Federal Rule of Civil Procedure 41(b) is beyond my comprehension. Mr. Antolini and I are available on July 23, 10:00 am to continue the questioning.

Moreover, because of the failing health of Mr. Antolini's 92 year old mother, and the need to have coverage for her, it is difficult to get the help he needs to do so. He has, however, been able to obtain coverage for the July 23rd or the 22nd date. That, coupled with my schedule has made it difficult for my client and I to coordinate a date and time and am unable to offer a third alternate date.

In fact, affiant fails to comprehend why would "good cause" need to shown when both Plaintiff and affiant are not in violation of any order regarding Mr. Antolini's continuing deposition.

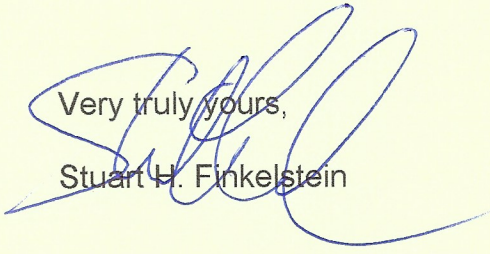
2) Affiant was out of town (July 4th weekend) and had no access to emails via flip phone and never received a phone call from defendants, contrary to your directives in that emails do no suffice.

Perplexing about this latest tohubohu engineered by defendants, is that the order of June 19 reads no later than July 23 for Mr. Antolin's continued deposition, so the illogical deduction of Plaintiff abandoning his lawsuit because defendants contacted me

at the start of the July 4th weekend and didn't hear back from me according to their schedule is bogus. Their phony basis for writing the Court is that they "anticipate the incurrence of additional Court Reporter fees as a result of Attorney Finkelstein's failure to confirm Plaintiff's availability is pure unadulterated garbage.

Affiant has conducted thousands of depositions and the usual and customary practice is to confirm depositions with the other side either one or two days before hand. It is patently clear what defendants have done here and to be countenanced would be a tragedy leading to a miscarriage of justice, all this while this facility is still discriminating against the physically challenged of this town.

On the Plaintiff's side, there has never been nor will there ever be a failure to prosecute, as reflected by the history of the (186) one hundred eighty-six entries on the docket of this case.


Very truly yours,

Stuart H. Finkelstein

SHF/tc
To all via ECF